

**IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

**IN RE:**

**CIRCUIT CITY STORES, INC., et al**

**DEBTORS.**

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§

**CASE NO. 08-35653-KRH  
Jointly Administered**

**CHAPTER 11**

**PANATTONI DENTON'S (I) OBJECTIONS TO MOTION  
OF THE DEBTORS FOR ORDER UNDER SECTION 365(d)(4)  
EXTENDING TIME WITHIN WHICH DEBTORS MAY ASSUME OR  
REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL  
PROPERTY AND (II) REQUEST TO COMPEL COMPLIANCE WITH  
OBLIGATIONS UNDER SECTION 365(d)(3)**

Panattoni Development Company, Inc., as Agent for VVI Texas Holdings, LLC, T1 P1 Texas, LLC, Dudley Mitchell Properties TX, LLC, Shelby Properties TX, LLC, and PINTAR Investment Properties, TX, LLC ("Panattoni Denton"), by and through its undersigned counsel, hereby (i) objects to the *Motion of the Debtors for Order Under Section 365(d)(4) Extending Time Within Which Debtors May Assume or Reject Unexpired Leases of Nonresidential Real Property* (the "Extension Motion") and (ii) requests that the Court compel the Debtors to timely comply with their obligations under section 365(d)(3) of the Bankruptcy Code, and in support thereof, respectfully states as follows:

**BACKGROUND**

1. On November 10, 2008 ("Petition Date"), the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code ("Bankruptcy Code"), thereby commencing these cases.

2. On or about November 20, 2008, the Debtors filed the Extension Motion, in which they seek to extend the time within which they must assume or reject unexpired nonresidential real property leases under which the Debtors are lessee.

3. Panattoni Denton, as landlord, and Circuit City Stores, Inc. ("Circuit City") (one of the Debtors herein), as tenant, are parties to a lease agreement (the "Denton Lease") under which Panattoni Denton leases certain property (the "Leased Premises") located at the Shops at Colorado in Denton, Texas to Circuit City.

4. In the Extension Motion, the Debtors seek to extend the time within which they must assume or reject the Denton Lease from March 10, 2009 to June 8, 2009.

5. In the interim, the Debtors continue to enjoy the benefits of the Denton Lease but have failed to timely perform their post-petition obligations under the lease in violation of section 365(d)(3) of the Bankruptcy Code.

6. As of the filing of this objection and request, the Debtors owe Panattoni Denton the following post-petition amounts (plus attorneys' fees and expenses):

Rent for November <sup>1</sup> and December	\$ 70,655.80
CAM for November and December	\$ 8,411.43
Insurance for November and December	\$ 2,052.91
Taxes for November and December	\$ 7,022.74
Total due	\$ 88,142.88

**OBJECTIONS AND REQUEST TO COMPEL  
COMPLIANCE WITH SECTION 365(d)(3)**

7. Panattoni Denton objects to the relief requested in the Extension Motion because there is no cause to extend the time within which the Debtors must assume or reject the Denton Lease.

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<sup>1</sup> November numbers were calculated to include the post-petition stub period only. Panattoni Denton reserves its rights to collect the full amount due for November 2008.

8. Under section 365(d)(4)(B), the time for assuming or rejecting the Denton Lease may be extended only for cause. *See* 11 U.S.C. § 365(d)(4)(B).

9. The current deadline is not set to expire until March 10, 2009. Accordingly, there is no cause for extending the time period at this time and the Extension Motion is premature at best.

10. More importantly, however, the Debtors continue to enjoy the benefits of the Denton Lease without timely complying with their post-petition obligations under the Denton Lease in violation of section 365(d)(3) of the Bankruptcy Code.

11. Under Section 365(d)(3), the Debtors must timely perform all of their post-petition obligations under the Denton Lease pending assumption or rejection of the lease. *See* 11 U.S.C. § 365(d)(3). As noted, however, as of the filing of this objection and request, the Debtors owe Panattoni Denton post-petition obligations under the Denton Lease in the approximate amount of \$88,142.88 (plus attorneys' fees and expenses).

12. Therefore, Panattoni Denton requests that the Court compel the Debtors to comply with their obligations under section 365(d)(3) of the Bankruptcy Code pending assumption or rejection the Denton Lease.

#### **JOINDER IN OTHER LANDLORD OBJECTIONS**

13. To the extent not inconsistent with this objection and request, Panattoni Denton joins in the objections of the other landlords to the Extension Motion.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDER, Panattoni Denton moves the Court to deny the relief requested in the Extension Motion and to compel the Debtors to timely comply with their

obligations under section 365(d)(3), and for such other and further relief as the Court deems just and proper both in equity and at law.

Respectfully submitted,

**CANTOR ARKEMA, P.C.**

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PROPERTIES TX, LLC, AND PINTAR  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the parties on the attached Service List via electronic means as listed on the court's ECF noticing system or by regular U. S. First Class Mail on this 3rd day of December, 2008.

/s/ William A. (Trey) Wood, III  
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